Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Policy Implications of the Changing Video Marketplace	)	**MM Docket No. 91-221**

To: The Commission

CONSOLIDATED REPLY COMMENTS OF
TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune") hereby replies to the comments filed in this proceeding[1] by The Motion Picture Association of America, Inc. ("MPAA"), The Teledemocracy Project ("Project"), and the Office of Communication of the United Church of Christ ("UCC") (together, the "Parties"), all of which oppose modification of the Commission's current television duopoly and multiple ownership rules. None of the Parties, however, has refuted the propositions that: (1) the premises underlying those rules have been substantially eroded by the dramatic changes in the video marketplace recently chronicled by the Commission's staff; and (2) changes in Section 73.3555 of the Commission's regulations thus are required to protect the public interest in free and diverse local television service.[2]

Tribune also opposes the proposal by CBS Inc. ("CBS") that the "off-network" proscriptions of § 73.658(k), the Prime

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[1] See Notice of Inquiry in MM Docket 91-221, 6 FCC Rcd. 4961 (released August 7, 1991) ("NOI").

[2] See generally, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd. 3996 (1991) ("OPP Paper").

Time Access Rule ("PTAR"), be repealed or modified. Such action would be beyond the scope of this proceeding and inconsistent with the Commission's fundamental interest in promoting program diversity recently reaffirmed in its "FinSyn" rule making.[3]

I. THE VIDEO MARKETPLACES OF TODAY AND TOMORROW DO NOT REQUIRE STRICT DUOPOLY AND MULTIPLE OWNERSHIP RULES.

MPAA, the Project and UCC uniformly oppose elimination or relaxation of the Commission's television duopoly [§73.3555 (a)(3)] and multiple ownership [§73.3555(d)] rules, suggesting variously that such changes are unjustified, would be imprudent, and would not benefit the public interest. The Parties' comments are without merit.

A. MPAA Has Adopted an Outdated Perspective.

MPAA supports retention of the television duopoly rule because "maximum diversity of voices requires maximum diversity of ownership in local markets" and claims that "there is no hint that eliminating the duopoly rule will contribute to competition within local markets." MPAA at 23, 24. In so arguing, however, MPAA ignores a principal premise of the OPP Paper and of the Commission's Inquiry: *competition in video markets is no longer in short supply*. Moreover, MPAA is simply wrong. By drawing upon managerial, technical, and on-air talent to which they

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[3] See Evaluation of the Syndication and Financial Interest Rules, 6 FCC Rcd. 3094 ("FinSyn Order"), *affirmed*, Memorandum Opinion and Order in MM Docket 90-162, FCC 91-336 (released November 22, 1991, *appeal docketed sub nom.*, CBS Inc. v. F.C.C., No. 91-1610 (D.C. Cir., December 18, 1991). Six petitions for review of the Finsyn Order also have been consolidated for hearing before the Seventh Circuit.

already have access, group broadcasters are uniquely positioned to improve local service.

In light of the explosion in the number of video providers in the past 15 years, and the virtual certainty that technology will further expand the public's viewing options, restrictive structural ownership rules designed to assure diversity in ownership are no longer needed. Accordingly, the Commission should use this proceeding to encourage the diversity in programming that it previously has found group ownership to facilitate.[4] Because the economic and technical conditions which gave rise to the television duopoly rule no longer exist, especially in major television markets, the rule may be relaxed without risking the kind of concentration of economic control it originally was designed to preclude.[5]

MPAA also relies on information of limited relevance in opposing relaxation of Section 73.3555(d): the "12-12-12 rule." First, its comments on this issue are geared almost entirely to broadcast networks. Second, it notes that relaxation of the multiple ownership rules in 1985 did not produce radical consolidation of ownership in the video industry. While MPAA claims

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[4] See Tribune Comments at 13.

[5] Tribune also notes that, upon relaxation of the duopoly rule by the FCC, the antitrust laws will remain available to both the government and private parties. The Commission has relied upon such protection many times in relaxing its own regulations. See, e.g., Elimination of Unnecessary Broadcast Regulation, 59 R.R.2d 1500 (1983) (FCC prohibition on combination advertising rates and other joint sales practices eliminated in reliance on state and federal antitrust laws), *recon. denied*, Memorandum Opinion and Order in MM Docket 83-842, 2 FCC Rcd. 3474 (1987).

that this fact argues for retention of the present rule, it better demonstrates the lack of risk inherent in relaxation of the FCC's multiple ownership rules.

B. The Project Seeks to Obfuscate the Critical Issue.

The Project also attempts to cloud the real issue in this proceeding -- the dubious legitimacy of the Commission's current multiple ownership rules -- with largely irrelevant data. For example, it quotes NAB comments filed with the Federal Reserve Board for the propositions that broadcasters fared reasonably well in the 1980's [Project at 3] and remain optimistic about their industry. Id. at 2. These excerpts, however, shed no light on the likely effects in the 1990's and beyond of the competition facing broadcasters anticipated by the FCC's staff. The Project also claims that neither broadcast audience share nor advertising revenue have declined at the same rate that cable audience and revenue have increased. [Project at 3-5] However, the Project does not explain the relevance of its observation. Nor does it deny the essential fact that broadcast audience shares and revenues have suffered from the explosive growth of competing media.

The Project further alleges that the OPP Paper's conclusions with respect to the likely decline in broadcast advertising revenues were unfounded and "ideologically-motivated." [Project at 6] This comment is particularly disingenuous. For example, in citing only to the summary of the OPP Paper's section on "The Advertising Market," the Project ignores the exhaustive

research which precedes it. It is those data which carefully lay the foundation for the conclusion with which the Project then quibbles. Moreover, its abstract call for "further study of the future of television" [Project at 6] makes no sense given: (1) the exhaustive scope of the OPP Paper, and (2) the fact that the Project will have ample opportunity to conclude any further research it believes necessary before the close of the pleading cycle to be established in the Notice of Proposed Rule Making likely to be released in this proceeding.

C. UCC's Economic Analysis is Misdirected.

While UCC acknowledges broadcasters' weakening economic position, it attributes declining profits almost entirely to allegedly "excessive expenses," particularly for syndicated programming. UCC also claims that a "database" it has compiled documents that, contrary to the OPP Paper's findings, group-owned stations produce less local public affairs programming overall than do individually owned stations. [UCC at 13]

The cost of syndicated programming has escalated dramatically in the past decade. Tribune rejects UCC's implicit premise, however, that the Commission should not be responsive to fundamental changes in the marketplace. The issue in this proceeding is not what will justify change in the multiple ownership rules, but rather what factors -- if any -- warrant their retention. Absent the legitimate concern for diversity of viewpoint which originally informed them, the rules can and should be modi-

fied to permit broadcasters to compete effectively in the new and heavily populated video marketplace.[6]

Furthermore, whether the economies of scale made possible by reform of the multiple ownership rules will result in increased local programming is best determined in the marketplace. This is particularly true given that, even if the accuracy of UCC's "database" is presumed, *arguendo*, no decline in local news programming is likely to result.[7] Tribune, however, concedes neither the relevance nor the accuracy of UCC's study which, if relied upon by the Commission, should be subjected to review and comment at the next stage of this proceeding.[8]

In sum, none of the Parties provides any reason for the Commission to truncate this proceeding. Accordingly, the Commission should issue a Notice of Proposed Rule Making which proposes repeal of the television station ownership and audience reach ceilings at Section 73.3555(a)(3), as well as elimination or

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[6] UCC's statement that "further relaxation of the rules will exacerbate rather than alleviate the financial decline of broadcasters" is paternalistic and ill-informed. [UCC at 10] On the basis of its more than forty years of actual television station ownership and operation, Tribune firmly believes that elimination or substantial relaxation of the FCC's ownership rules will serve both the broadcast industry and the public.

[7] UCC quarrels with the Commission's and OPP Paper's independent findings that group ownership results in an increase in local programming and, therefore, program diversity. It concedes, however, that "[t]he amount of local news aired provided by group and individually owned stations [is] about the same." See UCC at 13.

[8] The mere filing of data which purports to contradict the OPP Paper certainly does not justify termination of the proceeding at this early stage.

relaxation of the television duopoly rule at Section 73.3555(d).

II. CBS's PTAR PROPOSAL IS BEYOND THE SCOPE OF THIS PROCEEDING AND INCONSISTENT WITH NEW FCC POLICY.

Section 73.658(k) of the Commission's Rules, the "Prime Time Access Rule," presently prohibits the affiliates of television networks in the nation's top fifty television markets from broadcasting "off-network" (as opposed to first-run or local) programs during the "access period" which, in practice, precedes prime time. In its comments in this docket, CBS advocates that the off-network provision of PTAR be repealed, alleging that it "hobbles" the ability of its affiliates to compete with other stations for viewers and that it artificially increases the network's costs for programming. CBS's suggestion should be rejected for at least two reasons.

First, CBS's proposal is beyond the scope of this proceeding. The FCC's Notice of Inquiry was "prompted . . . by a number of apparent trends described in [the OPP Paper] on the status of the video marketplace" and is intended to address certain enumerated "findings of the OPP Paper...." NOI at 4961. Significantly, neither the OPP Paper nor the NOI cites or alludes to PTAR. CBS's attempt to interject a matter wholly unrelated to the policies addressed in the NOI is, therefore, inappropriate.[9]

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[9] In light of the complexity of the relationships implicated by the prime time access rule (see, e.g., KCRA's September 12, 1991 experimental authorization, FCC 91-274), and the heat with which any PTAR proposal is likely to be debated, a separate Notice of Inquiry would be necessary to address CBS's proposal. Tribune believes such an NOI to be unnecessary and inadvisable.

Second, CBS's proposal is premature given the Commission's release of its FinSyn Order just seven months ago, its reconsideration of that decision less than one month ago, and the pending appeals from that Order filed as recently as December 18, 1991.[10] Despite the networks' assault on PTAR in the FinSyn proceeding, the Commission found that:

> . . . first-run syndicated programming is the only nationally distributed broadcast television programming that competes directly with network and off-network syndicated programming and thus plays a critical role in providing diversity of program services to the American broadcast audience.

FinSyn Order at 3142 [¶ 132]. Repeal of PTAR, however, necessarily will place such first-run programming in direct competition with network and off-network material in which networks are now authorized to acquire or to retain an interest.

Grant of CBS's request would afford networks direct or indirect control over virtually *all* of prime time. Such control, in turn, would preclude or substantially diminish the access to prime time critical to the health of the nation's first-run syndication industry. That result would be antithetical to the Commission's newly reiterated:

> overall objective of fostering first-run programming as a diverse and competitive alternative to programming that is distributed or has been distributed through the network system.

FinSyn Order at 3146 [¶ 143]. Accordingly, the Commission should reject CBS's attempt to expand the instant proceeding.

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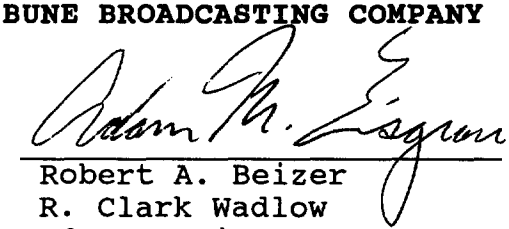
[10] See Note 3, *supra*.

III. CONCLUSION

Tribune disagrees categorically with the Parties' conclusion that, despite the radical changes which have redefined the video marketplace in the past 15 years, no modification of the Commission's ownership rules is warranted. The Parties have presented no evidence which supports termination of this docket at the inquiry stage. Tribune thus encourages the Commission to issue a Notice of Proposed Rule Making, incorporating the duopoly and multiple ownership rule modifications recommended in Tribune's comments. Moreover, Tribune urges the Commission not to encumber that rule making with the extraneous reconsideration of PTAR urged by CBS and just recently rejected on reconsideration in the FinSyn proceeding.

Respectfully submitted,

TRIBUNE BROADCASTING COMPANY

By: 

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